

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Don Troiani
464 Burr Road
Southbury, CT 06488
(b) County of Residence of First Listed Plaintiff New Haven
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS (SEE ATTACHED LIST)
CafePress.Com, Inc.
950 Tower Lane, Suite 600
Foster City, CA 94404 San Mateo
County of Residence of First Listed Defendant San Mateo
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) Gavin P. Lentz, Esq. Attorneys (If Known)
1524 Locust Street, Phila., PA 19102
(215) 735-3900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF | DEF | PTF | DEF |
|---|---|---|---|
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 U.S.C. section 502 et seq.

Brief description of cause:

Copyright Infringement

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ in excess of \$ 150,000** CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/3/08

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE

DEFENDANTS:

CAFEPRESS.COM, INC.
950 Tower Lane, Suite 600
Foster City, California 94404

and

PAUL STREITZ
8 William Street
Darien, Connecticut 06820

and

DONNA CLINE
4029 Whiteside Avenue
Anniston, Alabama 36206

and

MARION T. BUTL
112 East 44th Street
Savannah, Georgia 31405

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 464 Burr Road, Southbury, CT 06488

Address of Defendant: (See attached list of Defendants and addresses.)

Place of Accident, Incident or Transaction: (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes

No

N/A

Does this case involve multidistrict litigation possibilities?

Yes

No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases

(Please specify) 17 U.S.C. 502 et seq.

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Gavin P. Lentz, Esq., counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 4-3-08

Attorney-at-Law

53609

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4-3-08

Attorney-at-Law

53609

Attorney I.D.#

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 464 Burr Road, Southbury, CT 06488

Address of Defendant: (See attached list of Defendants and addresses.)

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No N/A

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

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Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No

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(Please specify) 17 U.S.C. 502 et seq.

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(Please specify)

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 464 Burr Road, Southbury, CT 06488

Address of Defendant: (See attached list of Defendants and addresses.)

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

N/A

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No

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1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
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10. Social Security Review Cases
11. All other Federal Question Cases

(Please specify) 17 U.S.C. 502 et seq.

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1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Gavin P. Lentz, Esq., counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

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I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4-3-08

Attorney-at-Law

53609

Attorney I.D.#

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Don Troiani	:	CIVIL ACTION
v.	:	
Cafepress.Com, Inc., et al	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

Date	(4-3-08)	
Telephone	(215) 735-3900	Attorney for Plaintiff
FAX Number	(215) 735-2455	Gavin P. Lentz, Esq.
E-Mail Address	glentz@bochettoandlentz.com	

**IN THE UNITED STATES DISTRICT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

DON TROIANI,)
464 Burr Road)
Southbury, Connecticut 06488,) Civil Action
)
Plaintiff,)
) No.
v.)
)
CAFEPRESS.COM, INC.,) JURY TRIAL DEMANDED
950 Tower Lane, Suite 600)
Foster City, California 94404,)
)
and)
)
PAUL STREITZ,)
8 William Street)
Darien, Connecticut 06820,)
)
and)
)
DONNA CLINE,)
4029 Whiteside Avenue)
Anniston, Alabama 36206,)
)
and)
)
MARION T. BUTL,)
112 East 44th Street)
Savannah, Georgia 31405,)
)
Defendants.)

CIVIL ACTION COMPLAINT

Plaintiff Don Troiani, by and through undersigned counsel, avers as follows in support of his claims against Defendants:

I. JURISDICTION AND VENUE

1. Jurisdiction is founded upon 28 U.S.C. § 1400(a) and 15 U.S.C. § 1125(a) in that Plaintiff Don Troiani (“Plaintiff” or “Mr. Troiani”) is the owner of several valid copyrights, which have been infringed upon by the acts of the Defendants.

2. Plaintiff’s non-federal claims are properly before this Court pursuant to the Supplemental Jurisdiction Act, 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as substantial acts of infringement giving rise to Mr. Troiani’s claims occurred in the Eastern District of Pennsylvania.

4. Venue is also proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(c) as Defendants have substantial business contacts with the Eastern District of Pennsylvania. Further, Defendants have marketed the infringing products here and have sold the infringing products here unlawfully infringing Plaintiff’s copyright and trademark rights.

II. THE PARTIES

5. Mr. Troiani is an adult individual residing at 464 Burr Road, Southbury, Connecticut 06488.

6. Mr. Troiani is a nationally known military artist and historian who has painted his artistic version of several historical scenes of the most dramatic moments of the American Revolutionary and Civil Wars. His paintings routinely sell for \$85,000 a piece. Defendants have harmed Plaintiff’s reputation and diminished the value of his copyrights by, among other things, selling G-strings with his artwork copied on them.

7. Mr. Troiani earns his living selling his copyrighted artwork to museums, publishing companies, and collectors. His paintings of military figures and dramatic,

historical scenes are owned by or on display at the Smithsonian Institute, West Point Military Academy, the United States Army National Guard, the Pentagon, and the National Park Service.

8. Mr. Troiani's paintings have been published in numerous publications and books on a worldwide basis.

9. Defendant Cafepress.com, Inc. ("Cafepress") is, upon information and belief, a Delaware corporation with its principal place of business located at 950 Tower Lane, Suite 600, Foster City, California 94404. Cafepress has promoted, aided, and profited from the infringement of Plaintiff's copyrighted artwork.

10. Defendant Paul Streitz ("Mr. Streitz") is an adult individual who may be served at 8 William Street, Darien, Connecticut 06820. Mr. Streitz has profited from the infringement of Plaintiff's copyrighted artwork.

11. Defendant Donna Cline ("Ms. Cline") is an adult individual who may be served at 4029 Whiteside Avenue, Anniston, Alabama 36206. Ms. Cline has profited from the infringement of Plaintiff's copyrighted artwork.

12. Defendant Marian T. Butl ("Ms. Butl") is an adult individual who may be served at 112 East 44th Street, Savannah, Georgia 31405. Ms. Butl has profited from the infringement of Plaintiff's copyrighted artwork.

III. FACTS COMMON TO ALL COUNTS

13. Defendant Cafepress is an online retailer that produces and distributes user-customized products with various designs and logos.

14. Defendant Cafepress provides an online storefront and website to its users. It also provides order management, production assistance, payment processing, and customer

service for the products that are bought and sold from its Internet storefront. In providing these services, Cafepress derives a substantial financial gain from the buying and selling of products.

15. Defendant Mr. Streitz is the shop keeper for the products entitled "Back to the Border", which were sold and advertised on the Cafepress website.

16. Defendant Ms. Cline is the shop keeper for the products entitled "The Greatminds", which were sold and advertised on the Cafepress website.

17. Defendant Ms. Butl is the shopkeeper for the products entitled "Sons of the South", which were sold and advertised on the Cafepress website.

18. In or about December, 2007, Mr. Troiani discovered that Cafepress was manufacturing, advertising, promoting, and selling numerous products, including t-shirts, mouse pads, coffee mugs, and women's thong-style underwear all of which contained reproductions/copies of Mr. Troiani's copyrighted artwork.

19. Mr. Troiani's artwork entitled "The Minuteman" was unlawfully copied and appeared on approximately forty four (44) different items that were sold and advertised on the Cafepress website as "Back to the Border" products. (A true and correct copy of the infringing "Back to the Border" products sold on the Cafepress website are Ex. "A" hereto.) The "Back to the Border" products were manufactured, sold, advertised, and marketed by Cafepress.

20. Mr. Troiani also discovered additional lines of products being sold and advertised on the Cafepress website as "The Greatminds" products. (A true and correct copy of the "The Greatminds" products sold on the Cafepress website are Ex. "B" hereto.) "The

Greatminds" products advertised on Cafepress contained infringing copies of Mr. Troiani's artwork entitled "Bunker Hill."

21. Mr. Troiani's artwork entitled "Bunker Hill" was copied on approximately sixty nine (69) different products, including women's thong underwear. (See photograph of thong underwear attached hereto as Ex. "C.")

22. The placement and advertising of Mr. Troiani's established military artwork on women's thong underwear has diminished, diluted, and harmed the reputation of Mr. Troiani's classic artwork as his paintings sell for as much as \$85,000 a piece. Moreover, the use of this artwork on these consumer products without permission or license from Mr. Troiani has made it impossible for him to license his work to others who would have paid valuable consideration for the right to use Mr. Troiani's well-respected images.

23. In addition to noticing Defendants' prohibited use of "The Minuteman" and "Bunker Hill", Mr. Troiani discovered that Defendants used depictions of six more of his copyrighted paintings on products advertised as "Sons of the South." (Attached hereto as Ex. "D" are true and correct copies of samples of the infringing products being sold on the Cafepress website.)

24. Each of these products contained a collage which infringed on the following copyrighted paintings belonging to Mr. Troiani: Boy Colonel, Tiger Rifles: Wheats 1st Special Battalion 1861, Jackson is With You, Washington Artillery of New Orleans ANV Companies 1862, The High Water Mark, and Southern Cross.

A. "The Minuteman"

25. In early 2001, Mr. Troiani created a painting which he named "The Minuteman." Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright

notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "The Minuteman" painting with the requisite copyright notice is attached hereto as Ex. "E.") Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

26. On or about March 14, 2001, Mr. Troiani formally registered his copyright of "The Minuteman" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "F".)

B. "Bunker Hill"

27. In early 2000, Mr. Troiani created a painting which he entitled "Bunker Hill." Before publishing this work of art, Mr. Troiani place his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "Bunker Hill" with the requisite copyright notice is Ex. "G".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

28. On or about June 21, 2000, Mr. Troiani formally registered his copyright of "Bunker Hill" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "H".)

C. "The Boy Colonel"

29. In 1988, Mr. Troiani created a painting which he entitled "The Boy Colonel." Before publishing this work of art, Mr. Troiani place his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and

correct copy of "The Boy Colonel" with the requisite copyright notice is Ex. "I".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

30. On or about August 17, 1990, Mr. Troiani formally registered his copyright of "The Boy Colonel" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "J".)

D. "Wheat's Tiger Rifles: 1st Special Battalion 1861"

31. In early 2000, Mr. Troiani created a painting which he entitled "Wheat's Tiger Rifles: 1st Special Battalion 1861." Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "Wheat's Tiger Rifles: 1st Special Battalion 1861" with the requisite copyright notice is Ex. "K".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

32. On or about February 18, 2000, Mr. Troiani formally registered his copyright of "Wheat's Tiger Rifles: 1st Special Battalion 1861" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "L".)

E. "Jackson Is With You"

33. In 1998, Mr. Troiani created a painting which he entitled "Jackson Is With You." Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "Jackson Is With You" with the requisite copyright notice is Ex. "M".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

34. In or about April 16, 1998, Mr. Troiani formally registered his copyright of "Jackson Is With You" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "N".)

F. "Washington Artillery of New Orleans ANV Companies 1862"

35. In 1991, Mr. Troiani created a painting which he entitled "Washington Artillery of New Orleans ANV Companies 1862." Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "Washington Artillery of New Orleans ANV Companies 1862" with the requisite copyright notice is Ex. "O".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

36. In or about May 2, 1991, Mr. Troiani formally registered his copyright of "Washington Artillery of New Orleans ANV Companies 1862" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "P".)

G. "The High Water Mark"

37. In 1994, Mr. Troiani created a painting which he entitled "The High Water Mark." Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "The High Water Mark" with the requisite copyright notice is Ex. "Q".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

38. In or about May 17, 1994, Mr. Troiani formally registered his copyright of "The High Water Mark" by delivering his application, a copy of the painting, and payment to the

Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "R".)

H. "Southern Cross"

39. In 1994, Mr. Troiani created a painting which he entitled "Southern Cross."

Before publishing this work of art, Mr. Troiani placed his name, the date, and a copyright notice at the bottom of the painting in accordance with his normal practice. (A true and correct copy of "Southern Cross" with the requisite copyright notice is Ex. "S".) Shortly thereafter, Mr. Troiani first published this work with his name and copyright notice.

40. In or about October 26, 1994, Mr. Troiani formally registered his copyright of "Southern Cross" by delivering his application, a copy of the painting, and payment to the Copyright Registrar. (A true and correct copy of the registration is attached hereto as Ex. "T".)

I. Defendants Have Access to Mr. Troiani's Copyrighted Work

41. Mr. Troiani is a nationally known military artist and historian who has painted several historical scenes of the most dramatic moments of the American Revolutionary and Civil Wars. (See Ex. "E", "G", "I", "K", "M", "O", "Q", and "S".) These paintings of military figures and dramatic, historical scenes are owned by or on display at the Smithsonian Institute, West Point Military Academy, the U.S. Army National Guard, the Pentagon, the National Park Service, and several Museums and Historical Societies. They are also affixed to three coins minted by the United States of America.

42. Mr. Troiani's artwork is also widely circulated and displayed in many Civil War and Revolutionary War publications.

43. A comparison of Defendants' infringing products with Plaintiff's copyrighted works shows that Defendants had access to Plaintiff's paintings before copying them exactly.

J. Defendants Willfully Infringe Plaintiff's Copyrighted Artwork

44. Defendants recognized the significance of having Plaintiff's artwork printed on their products, *i.e.* the portrayal of dramatic, well-known painted scenes by a nationally known artist.

45. Unlawfully using Plaintiff's paintings as a blueprint, Defendants manufactured, published, and distributed several dramatic scenes of the American Revolution, and copied these scenes without authorization by fixing literal copies directly on their products. (*See Ex. "A" – "D".*)

46. Defendants advertised these infringing products as "Back to the Border", "The Greatminds", and "Sons of the South." (*Id.*)

47. Relying on the reputation of Mr. Troiani, a nationally respected artist, Defendants have advertised and sold the infringing products at costs ranging from \$10.99 to \$26.99 an item. Mr. Troiani has been paid nothing and never authorized Defendants to use his artwork and affix copies of that artwork to t-shirts, mousepads, and women's thong-style underwear, *inter alia*. (*See Ex. "C."*)

48. In or about December 2007, Mr. Troiani, to his surprise, discovered that Defendants were willfully infringing his artwork by printing virtually identical copies of his paintings on numerous products and offering those products for sale through the Internet.

49. Defendants' use of the dramatic scenes from the following copyrighted paintings on their products is a clear and willful infringement: "The Minuteman", "Bunker Hill", "The Boy Colonel", "Southern Cross", "The High Water Mark", "Washington Artillery of

New Orleans ANV Companies 1862", "Jackson is With You", and "Wheat's Tiger Rifles: 1st Special Battalion 1861."

50. Defendants knowingly, willfully, directly and/or derivatively copied and derived financial gain, without independent creation, for the specific purpose of infringing Mr. Troiani's copyrights and to enrich themselves.

51. Defendants did not receive permission to use Mr. Troiani's paintings for use in the marketing and sale of the following lines of products: "Back to the Border", "The Greatminds", and "Sons of the South." (See Ex. "A" – "D".)

52. Defendants knowingly and willfully copied the following of Plaintiff's paintings without crediting Mr. Troiani for his creativity: "The Minuteman", "Bunker Hill", "The Boy Colonel", "Southern Cross", "The High Water Mark", "Washington Artillery of New Orleans ANV Companies 1862", "Jackson is With You", and "Wheat's Tiger Rifles: 1st Special Battalion 1861."

53. As a direct and proximate result of Defendants' conduct, Mr. Troiani has sustained economic and reputational loss.

COUNT I
MR. TROIANI v. ALL DEFENDANTS
(COPYRIGHT INFRINGEMENT)
(REQUEST FOR INJUNCTIVE RELIEF)
(17 U.S.C. § 502 ET. SEQ)

54. Plaintiff incorporates all prior paragraphs of this Complaint as if the same were set forth at length.

55. Defendants have willfully infringed Plaintiff's copyrights of the following artwork: "The Minuteman", "Bunker Hill", "The Boy Colonel", "Southern Cross", "The High Water Mark", "Washington Artillery of New Orleans ANV Companies 1862",

“Jackson is With You”, and “Wheat’s Tiger Rifles: 1st Special Battalion 1861.” *See ¶¶ A-H supra.* Defendants have failed to designate the original source of these works, which Defendants have used to sell, among other items, t-shirts, mousepads, and women’s thong-style underwear.

56. Defendants’ infringement, use, sale, and pirating of Plaintiff’s protected artwork has caused permanent and irreparable harm to Plaintiff’s reputation.

57. Unless an injunction issues, barring Defendants from further distributing, marketing, selling, publishing, or otherwise promoting its infringing products and other materials, Plaintiff will suffer ongoing irreparable harm to his name, reputation, and the exclusivity of his artwork.

58. Plaintiff has no adequate remedy at law.

59. Based upon the clear and willful violations in this case and the virtual identify of the artwork involved, Plaintiff has a substantial likelihood of success on the merits.

60. Greater harm will befall the Plaintiff than the Defendants if the injunctive relief herein is not granted.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment as follows:

- a. restraining all Defendants from promoting, selling, marketing, advertising, shipping, transporting (directly or indirectly), or otherwise moving in domestic or foreign commerce, any and all products, which infringe upon Plaintiff’s copyrighted artwork;
- b. ordering Defendants to forfeit (and/or recall) any and all products, including but not limited to t-shirts, mugs, mousepads, or women’s thong style underwear, which contain the infringing material;

- c. ordering Defendants to recall any and all of its catalogs, Internet postings, books, posters, brochures, or other sales literature, which contain products that infringe Plaintiff's protected artwork; and/or
- d. providing any such other relief this Court deems fair and just.

COUNT II
MR. TROIANI v. ALL DEFENDANTS
(COPYRIGHT INFRINGEMENT)
(REQUEST FOR MONETARY RELIEF)
(17 U.S.C. § 502 ET. SEQ)

- 61. Plaintiff incorporates all prior paragraphs of this Complaint as if the same were set forth at length.
- 62. At all times material, Plaintiff had copyrighted the following artwork and distributed the paintings with the required copyright notices: "The Minuteman", "Bunker Hill", "The Boy Colonel", "Southern Cross", "The High Water Mark", "Washington Artillery of New Orleans ANV Companies 1862", "Jackson is With You", and "Wheat's Tiger Rifles: 1st Special Battalion 1861."
- 63. Plaintiff registered his copyrights of these paintings by delivering his application, deposit material (consisting of a copy of his paintings) and required payment to the Copyright Registrar. *See ¶¶ A-H supra.*
- 64. The dramatic scenes as pressed and printed on Defendants' products are virtually identical to Mr. Troiani's copyrighted paintings.
- 65. Defendants had no license, authority, or permission to prepare or use any form or derivative copy or depiction of Plaintiff's paintings. Defendants have further collectively "induced" and encouraged infringement of Plaintiff's copyrights.

66. As laid out more fully above, Defendants willfully and deliberately infringed upon Mr. Troiani's protected works on multiple occasions and on more than one hundred (100) different products.

67. Defendants have unlawfully earned substantial profits by using Plaintiff's artworks in the advertisement of the following lines of products: "Back to the Border", "The Great Minds", and "Sons of the South."

68. Pursuant to 17 U.S.C. § 504, Plaintiff is entitled to one hundred thousand dollars (\$100,000) per each willful infringement and/or up to twenty thousand dollars (\$20,000) per each non-willful infringement.

69. Pursuant to 17 U.S.C. § 505, Plaintiff is also entitled to reasonable attorney's fees and costs for prosecuting this action.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in his favor and against Defendants for an amount in excess of one hundred fifty thousand dollars (\$150,000), plus interest, attorneys' fees, costs, and any such other relief this Court deems fair and just.

COUNT III
MR. TROIANI v. ALL DEFENDANTS
(UNFAIR COMPETITION)
(15 U.S.C. § 1125(a)-LANHAM ACT)

70. Plaintiff incorporates all prior paragraphs of this Complaint as if the same were set forth at length.

71. Plaintiff's fanciful artworks have been well-publicized and have acquired secondary meaning among collectors, historians, and others familiar with Plaintiff's artwork.

72. Defendants falsely designated the origin of several of the dramatic scenes printed on their products and related materials as the work of Defendants.

73. Plaintiff has suffered significant harm as a result of Defendants' false designation of origin and unfair competition as Defendants have unlawfully copied Plaintiff's well-recognized art, causing confusion among collectors and others as to the source and authenticity of his work.

74. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered harm to his reputation, damages to his trademark and other losses set forth more fully above.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in his favor and against Defendants for an amount in excess of one hundred fifty thousand dollars (\$150,000), plus interest, attorneys' fees, costs, and any such other relief this Court deems fair and just.

COUNT IV
MR. TROIANI v. ALL DEFENDANTS
(CIVIL CONSPIRACY)

75. Plaintiff incorporates all prior paragraphs of this Complaint as if the same were set forth at length.

76. Defendants and their agents and employees intentionally committed unlawful "overt acts" in furtherance of a conspiracy to pirate and misappropriate Plaintiff's artwork for their own use without Plaintiff's authorization.

77. The conspiracy committed by Defendants is set forth more fully above and proximately caused financial harm to Mr. Troiani, including harm to his reputation. WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in his favor and against Defendants for an amount in excess of one hundred fifty thousand dollars (\$150,000), plus interest, attorneys' fees, costs, and any such other relief this Court deems fair and just.

COUNT V
MR. TROLANI v. ALL DEFENDANTS
(COPYRIGHT INFRINGEMENT)
(VISUAL ARTISTS RIGHTS ACT OF 1940)
(17 U.S.C. § 106A(3)(A)-(B))

78. Plaintiff incorporates all prior paragraphs of this Complaint as if the same were set forth at length.

79. Plaintiff's works of art "The Minuteman", "Bunker Hill", "The Boy Colonel", "Southern Cross", "The High Water Mark", "Washington Artillery of New Orleans ANV Companies 1862", "Jackson is With You", and "Wheat's Tiger Rifles: 1st Special Battalion 1861" are works of recognized stature.

80. Plaintiff seeks to vindicate his moral right of integrity and to prevent the distortion, mutilation, or other modification of his artwork.

81. Plaintiff's honor and reputation has been tarnished as a direct result of Defendants' having affixed "The Minuteman", well-established artwork, on women's thong style underwear, among other products, and selling them for a profit.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment in his favor and against Defendants for an amount in excess of one hundred fifty thousand dollars (\$150,000), plus interest, attorneys' fees, costs, and any such other relief this Court deems fair and just.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by a jury of twelve (12) persons on all issues to which he is so entitled.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Date: 4/2/08

By: 

Gavin P. Lentz, Esquire

Vincent van Laar, Esquire

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